CURRENT DECISIONS

ADMIRALTY—AFFREIGHTMENT CONTRACTS—PREPAID FREIGHT—UNRECOVERABLE WHEN SAILING PREVENTED BY EMBARGO.—A sailing vessel with cargo for France was compelled by stress of weather to put back to New York, the port of departure; after completion of repairs she was prevented from sailing again by a Government embargo on voyages of sailing vessels to the war zone. She thereupon discharged her cargo. The bill of lading embodied the clause: "Freight earned, retained and irrevocable, vessel lost or not lost." The cargo owners libelled the vessel for the return of the prepaid freight. *Held,* that they were not entitled to recover. *Allanwilde Transport Corporation v. Vacuum Oil Co.* (1918) 39 Sup. Ct. 147.

The shippers had contracted away their claim that earnings depended on actual carriage of the goods, although there had in fact been a breaking of ground and involuntary return to port. The decision is interesting, in that the privilege of retaining the freight was recognized nothwithstanding the absence of any "restraint of princes" clause in the bill of lading. A similar conclusion was reached under a bill of lading containing an analogous prepaid freight clause and in addition a "restraint of princes" clause, but where the sailing was embargoed after loading merely and before the ship had broken ground. *The Gracie D. Chambers* (1918) 39 Sup. Ct. 149, *The Bris, ibid.* 150. For a discussion of the relation between the carriage of goods and the earning of freight and of the effect of "prepaid freight" clauses, see (1919) 28 YALE LAW JOURNAL, *279.*

ADMIRALTY—"RESTRAINT OF PRINCES"—LEGALITY OF REQUISITION OF VESSEL BY FOREIGN GOVERNMENT NOT OPEN TO QUESTION IN UNITED STATES COURT.—In defense against a libel for breach of a charter party for the hire of a vessel containing a "Restraint of Princes" exception, the claimant [defendant] showed that the British Government had requisitioned the vessel. *Held,* that the libel should be dismissed. *The Adriatic* (1918, E. D. Penn.) 253 Fed. 489.

The statement of the British Government, appearing by *amici curiae,* to the effect that it had requisitioned the vessel, was held to preclude inquiry by a United States Court into the legality of the requisitioning. When the act of a public officer of a foreign government is alleged to be unauthorized by foreign municipal law, it must, said the court, first be repudiated by that government, before an American court would pronounce it illegal. See the *dictum* of Judge L. Hand in *The Florence H.* (1918, S. D. N. Y.) 248 Fed. 1012, 1017. This ascribes too conclusive a character to the legality of the acts of foreign officers. There may be no reason or desire on the part of the foreign government to repudiate the act. Only when the foreign government *asserts* the legality of the act is a municipal court precluded from denying it.

ARMY AND NAVY—INTERNED CIVILIAN ALIEN ENEMY—PAROLE NOT TO SERVE AGAINST INTERNING GOVERNMENT OPERATES AS EXEMPTION FROM SERVICE.—On the outbreak of the war between Great Britain and Germany, the appellant, a British subject, was in Hamburg, Germany. He was allowed freedom of movement in the city, but was forbidden to leave, except upon taking an oath and parole not to take up arms against Germany, on the breaking of which, he would, if caught, be shot. Failure to give the parole would have resulted in detention until the end of the war. The appellant gave his parole and returned to England.

Being called for British military service, he claimed exemption under section 8 of the Military Service Act, 1916 as a person who had been "a prisoner of war, captured or interned by the enemy, and [had] been released." *Held,* that he was exempt from service. *King v. Burnham* (1918, K. B.) 119 L. T. Rep. 308.

It required a liberal construction, believed, however, to be correct, to hold that notwithstanding the freedom of movement allowed the appellant, the prohibition to leave Hamburg constituted an "internment" of a civilian prisoner. In a previous case, temporary detention pending inquiry as to whether a British subject should be kept in Germany as a prisoner of war was held not to constitute "internment." *Robinson v. Metcalf* (1917, K. B.) 33 Times L. R. 542. The sanctity given by the court to appellant's oath to Germany speaks well for the character of Bristish justice. See also Hall, *Int. Law* (7th ed.) 432.

CONSTITUTIONAL LAW—FULL FAITH AND CREDIT—VALIDITY OF SERVICE ON FORMER AGENT OF NON-RESIDENT.—An action was brought in Illinois upon a judgment for money rendered by a Kentucky court. The transactions upon which the Kentucky judgment was based took place in that state. At the time the defendants were residing in another state and carried on business in Kentucky through a resident who on their behalf entered into the transaction in question. The agency was terminated before the Kentucky suit was brought. Under the Kentucky statute process was served upon the former agent. No other service was had upon the defendants, who were still non-residents. *Held,* that the Kentucky judgment was void and so not entitled to recognition by the Illinois court. *Flexner v. Farson, Jr. et al.* (1919) 39 Sup. Ct. 97.

Under prevailing notions as to state jurisdiction the result is sound. The court argued that as the state had no power to exclude the defendants from doing business in the state, it could not require as a condition of letting them in that they assent to service on the former agent, as it might have done in the case of a corporation chartered by another state. *New York Life Ins Co. v. Dunlevy* (1915) 241 U. S. 518, 36 Sup. Ct. 613; *Mutual Reserve Fund Life Ass'n v. Phelps* (1903) 190 U. S. 147, 23 Sup. Ct. 707. The law as to the state's power to exclude the foreign corporation seems, however, to be in a transition period. Henderson, *The Position of Foreign Corporations in American Constitutional Law,* reviewed *infra.* The principal case, however, calls attention to a serious evil, viz., that the courts of the state in which the transaction took place have no power at present to compel the non-resident who acts through an agent to submit to their adjudication of controversies arising out of transactions carried on in the state. Such a result suggests the desirability of a law permitting the service throughout the country of such process in appropriate cases. See the article by Professor Cook, *The Powers of Congress under the Full Faith and Credit Clause, supra,* p. 421.

CONSTITUTIONAL LAW—POLICE POWER—STATUTE REGULATING INGREDIENTS OF CONDENSED MILK.—An Ohio statute prohibited under penalty the sale of condensed milk unless made from milk "from which the cream had not been removed and in which the proportion of milk solids" equalled a prescribed percentage. The plaintiff manufactured and sold "Hebe," a pure product of "skimmed milk condensed by evaporation" to which cocoanut oil to the extent of six per cent was added. The label plainly indicated the ingredients. The plaintiff brought a bill to restrain threatened prosecutions. *Held,* that the plaintiff was not entitled to relief, as the statute was valid and the plaintiff's product fell within it. Day, Van Devanter, and Brandeis, JJ., *dissenting. Hebe Co. and Carnation Milk Products Co. v. Shaw* (1919) 39 Sup. Ct. 125.